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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1138 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

STATE OF GUJARAT

Versus

PRATAPJI SHANKARJI

Appearance:

MR. K.C. SHAH, LD. ASSTT.PUBLIC PROSECUTOR for Petitioner

MR MJ BUDDHBHATTI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 14/07/97

ORAL JUDGEMENT

Per: S.D. Dave, J: -

The Respondents accused came to be acquitted of the offences punishable under section 307, 426 and 326 I.P. Code, and under section 135 of the Bombay Police Act, 1949, under the orders dated May 31, 1984, by the Ld. Addl. Sessions Judge, Sabarkantha. The said orders of acquittal are in challenge in the present Appeal filed by the State - the Appellant.

The Respondents-accused were put on trial for the alleged commission of the said offences, on the accusation that, the Respondents-accused no.1 and 2 were armed with dharias, while the Respondent no.3 accused was armed with a stick, and that, on 29th March 1983, at about 7.00 p.m. they had assaulted upon the injured Rupsinh with the above said weapons in furtherance of their common object and that, at the same time had committed mischief and caused the damage in sum of Rs.50-00.

The case of the prosecution in brief was that, the injured witness Rupsinh had some cultivation in the river bed of River Sabarmati, near Village Vaghpur, under the Prantij Taluka of the Sabarkantha District. Two other persons who came to be cited as the witnesses, namely Raval Dhula Maru and Raval Lilabhai had also similar cultivation situated in the vicinity. According to the case of the prosecution, the three accused persons had come there and had asked for the melons which were cultivated by the injured witness, and on his refusal, an altercation and later on the assault had followed; during which the injured had received multiple injuries. The First Information Report came to be lodged by the brother of the injured on the next day at about 10.00 a.m. Any how, before the formal F I R came to be registered, the police had recorded the statement of Rupsinh, the injured, and in the same way the Executive Magistrate had also recorded a declaration of the victim, which in certain circumstances would have been admissible under Section 32 of the Indian Evidence Act, 1872. On the basis of the complaint, which came to be filed by the brother of the injured, offences were registered and the investigation had started.

The charge at Exhibit-4 came to be framed by the Court and denied by the Respondents-accused. On the appreciation of the evidence on record, the trial Court has come to the conclusion that, the prosecution was not able to establish the case against the accused. The trial Court therefore was pleased to record a Judgment of acquittal, which is in challenge before us.

Ld. Addl. Sessions Judge has pointed out certain broad features, which according to him, had weakened the case of the prosecution to the full extent and that, therefore, he was not in a position to recognise the case of the prosecution. The Court below has noticed with pertinence that, two independent eye witnesses who used to reside in the vicinity and who, according to the case of the prosecution, had run to the spot of the occurrence and had witnessed the incident came to be dropped and their evidence was not made available to the Court. Ld. Addl. Sessions Judge has also noticed with pertinence that, the Executive Magistrate who had recorded the statement of the injured was also not examined by the prosecution. The delay in filing the F I R before the police has also weighed a lot before the Ld. trial Judge.

While coming to the conclusion that the above said infirmities would be fatal to the case of the prosecution, the Court below has placed reliance upon certain case law. While making a reference to the Supreme Court decision in Thulia Kali vs. The State of Tamil Nadu A.I.R. 1973, S.C. pg. 501, the Court below has observed that, it is essential that the delay in the lodging of the F.I.R. should be satisfactorily explained. The Court below has taken the view that the circumstances before him spelled out an inordinate delay in lodging the F.I.R. and that the explanation being submitted by the prosecution for the delay did not appear to be plausible.

Upon reading the entire judgment rendered by the Court below, we are of the opinion, that, the above said are in fact the infirmities in the case of the prosecution. The map which would indicate the topography of the scene of occurrence would go to show that the plantations of two persons, namely Lilabhai Raval and Dhulabhai Raval were situated in the vicinity and that, the distance would be hardly about 50 spaces. This becomes clear from the panchanama and the map as indicated above. The evidence of PSI Jagatsinh, P.W. 5, Exhibit-20, would be sufficient to show that, these two important witnesses have not been examined, though their statements were recorded by the Investigating Agency at the relevant time. Coupled with this fact, is a further fact that the evidence of the Executive Magistrate who had recorded the statement of the injured also has not been recorded. We therefore are satisfied, on the question of the establishment of the case of the prosecution being hurdled by the infirmity, that the

important eye witnesses, came not to be examined by the prosecution.

So far as the aspect of delay in lodging the FIR is concerned, the concentration shall have to be on the evidence not only of victim Rupsinh PW-2, Exhibit-14, but also of the complainant Dolsinh, PW-1, Exhibit-1. Dolsinh in his evidence makes it clear that his son Rangusinh had met him at village Anodia just after the mid-night, and on the following day at about 7.00 a.m. they had firstly gone to the spot of the occurrence and later on had gone to the house of injured Rupsinh. Dolsinh's evidence further makes it clear that, later on the injured was taken to Prantij Primary Health Centre and thereafter his formal complaint came to be registered by the police. The evidence of Investigating Officer Jagatsinh, PW-5, Exhibit-20 makes it abundantly clear that, the formal complaint or the F I R came to be lodged at about 10.00 a.m. on the next day. Complainant Dolsinh also says that, they had some conference at the house of the injured and later on the above said belated F I R came to be registered. When the evidence of injured Rupsinh, PW-2, Exhibit-14 is referred, it becomes abundantly clear that, the formal complaint or the F I R could be registered on the next day at about 10.00 a.m. His say is clear when he says that, before the F I R could be registered, the police had recorded his statement. His say in the cross examination is crystal clear when he says that a Police Patel has been stationed at his village, but though he was taken to the village in the injured condition, he had never cared to inform the Police Patel. This evidence therefore would go to show that, though the injured had reached his village where a Police Patel is stationed, nothing was revealed to him and that, the F.I.R. came to be registered on the next day at about 10.00 a.m. and that also after a conference and after the statements of the victim came to be recorded by the police and later on by the Executive Magistrate. In our opinion there has been an inordinate delay as has been pointed out by the Ld. trial Judge, and we do not find a reasonable explanation for the same. There was every opportunity to file an early F I R either before the police or before the Police Patel of the village,but in our opinion, the same was not availed of either by the victim or by the complainant. In our opinion, therefore, this inordinate delay remains unexplained through out and that, the court below was perfectly justified in taking this view.

Despite all, we have seen the evidence of the lone so called eye witness Umedsinh, PW-4, Exhibit-19,

but the same hardly inspires any confidence. According to him, he had witnessed the incident for a pretty long time of about 15 minutes but he was not able to say anything regarding the blows, the author of the blows and the part of the body of the victim on which the blows were received. He has also stated that, even after the injured was taken to the village he had not disclosed his knowledge before anybody and had kept silence till his statement came to be recorded by the police, only after a pretty long time. Therefore, in our view, the evidence of the lone so called eye witness Umedsinh also does not further the case of the prosecution.

Ld. counsel Mr. Bhddhbhatti who appears on behalf of the Respondents-accused presses in service the Supreme Court decision in Ramesh Babulal Doshi, Appellant vs. State of Gujarat, Respondent, 1996 (2) G.L.H, pg. 206 . This pronouncement of the Supreme Court makes it clear that the Appellate Court is required to seek an answer to the question whether the findings of trial Court are, (i) palpably wrong, (ii) manifestly erroneous or (ii)demonstrably unsustainable. The Supreme Court makes it clear further that, when the Appellate Court holds that the acquittal part cannot at all be sustained in view of any of the infirmities, it can then and then only reappreciate the evidence for its own conclusion.

Having read the judgment rendered by the Court below, we are not in a position to say that either the judgment rendered by the trial Court is palpably wrong, is manifestly erroneous,or is demonstrably unsustainable. In our view, therefore the Appeal requires a rejection. Despite this, we have scanned the evidence of the so called eye witness Umedsinh PW-4, Exhibit-19.

In our considered view,therefore, no interference is justified at our hands in the acquittal appeal. The Appeal against acquittal requires to be dismissed. We order accordingly. Bail if any bonds shall stand cancelled.

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